

Adopted	Rejected
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COMMITTEE REPORT

YES:	7
NO:	6

MR. SPEAKER:

*Your Committee on Insurance, Corporations and Small Business, to which was referred Senate Bill 341, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 27-4-1-4, AS AMENDED BY P.L.130-2002,
- 4 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 5 JULY 1, 2003]: Sec. 4. The following are hereby defined as unfair
- 6 methods of competition and unfair and deceptive acts and practices in
- 7 the business of insurance:
- 8 (1) Making, issuing, circulating, or causing to be made, issued, or
- 9 circulated, any estimate, illustration, circular, or statement:
- 10 (A) misrepresenting the terms of any policy issued or to be
- 11 issued or the benefits or advantages promised thereby or the
- 12 dividends or share of the surplus to be received thereon;
- 13 (B) making any false or misleading statement as to the
- 14 dividends or share of surplus previously paid on similar

- 1 policies;
- 2 (C) making any misleading representation or any
- 3 misrepresentation as to the financial condition of any insurer,
- 4 or as to the legal reserve system upon which any life insurer
- 5 operates;
- 6 (D) using any name or title of any policy or class of policies
- 7 misrepresenting the true nature thereof; or
- 8 (E) making any misrepresentation to any policyholder insured
- 9 in any company for the purpose of inducing or tending to
- 10 induce such policyholder to lapse, forfeit, or surrender his
- 11 insurance.
- 12 (2) Making, publishing, disseminating, circulating, or placing
- 13 before the public, or causing, directly or indirectly, to be made,
- 14 published, disseminated, circulated, or placed before the public,
- 15 in a newspaper, magazine, or other publication, or in the form of
- 16 a notice, circular, pamphlet, letter, or poster, or over any radio or
- 17 television station, or in any other way, an advertisement,
- 18 announcement, or statement containing any assertion,
- 19 representation, or statement with respect to any person in the
- 20 conduct of his insurance business, which is untrue, deceptive, or
- 21 misleading.
- 22 (3) Making, publishing, disseminating, or circulating, directly or
- 23 indirectly, or aiding, abetting, or encouraging the making,
- 24 publishing, disseminating, or circulating of any oral or written
- 25 statement or any pamphlet, circular, article, or literature which is
- 26 false, or maliciously critical of or derogatory to the financial
- 27 condition of an insurer, and which is calculated to injure any
- 28 person engaged in the business of insurance.
- 29 (4) Entering into any agreement to commit, or individually or by
- 30 a concerted action committing any act of boycott, coercion, or
- 31 intimidation resulting or tending to result in unreasonable
- 32 restraint of, or a monopoly in, the business of insurance.
- 33 (5) Filing with any supervisory or other public official, or making,
- 34 publishing, disseminating, circulating, or delivering to any person,
- 35 or placing before the public, or causing directly or indirectly, to
- 36 be made, published, disseminated, circulated, delivered to any
- 37 person, or placed before the public, any false statement of
- 38 financial condition of an insurer with intent to deceive. Making

1 any false entry in any book, report, or statement of any insurer
2 with intent to deceive any agent or examiner lawfully appointed
3 to examine into its condition or into any of its affairs, or any
4 public official to which such insurer is required by law to report,
5 or which has authority by law to examine into its condition or into
6 any of its affairs, or, with like intent, willfully omitting to make a
7 true entry of any material fact pertaining to the business of such
8 insurer in any book, report, or statement of such insurer.

9 (6) Issuing or delivering or permitting agents, officers, or
10 employees to issue or deliver, agency company stock or other
11 capital stock, or benefit certificates or shares in any common law
12 corporation, or securities or any special or advisory board
13 contracts or other contracts of any kind promising returns and
14 profits as an inducement to insurance.

15 (7) Making or permitting any of the following:

16 (A) Unfair discrimination between individuals of the same
17 class and equal expectation of life in the rates or assessments
18 charged for any contract of life insurance or of life annuity or
19 in the dividends or other benefits payable thereon, or in any
20 other of the terms and conditions of such contract; however, in
21 determining the class, consideration may be given to the
22 nature of the risk, plan of insurance, the actual or expected
23 expense of conducting the business, or any other relevant
24 factor.

25 (B) Unfair discrimination between individuals of the same
26 class involving essentially the same hazards in the amount of
27 premium, policy fees, assessments, or rates charged or made
28 for any policy or contract of accident or health insurance or in
29 the benefits payable thereunder, or in any of the terms or
30 conditions of such contract, or in any other manner whatever;
31 however, in determining the class, consideration may be given
32 to the nature of the risk, the plan of insurance, the actual or
33 expected expense of conducting the business, or any other
34 relevant factor.

35 (C) Excessive or inadequate charges for premiums, policy
36 fees, assessments, or rates, or making or permitting any unfair
37 discrimination between persons of the same class involving
38 essentially the same hazards, in the amount of premiums,

policy fees, assessments, or rates charged or made for:

(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;

(ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or

(iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A) and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the

1 definition of discrimination or rebates any of the following
2 practices:

3 (A) Paying bonuses to policyholders or otherwise abating their
4 premiums in whole or in part out of surplus accumulated from
5 nonparticipating insurance, so long as any such bonuses or
6 abatement of premiums are fair and equitable to policyholders
7 and for the best interests of the company and its policyholders.

8 (B) In the case of life insurance policies issued on the
9 industrial debit plan, making allowance to policyholders who
10 have continuously for a specified period made premium
11 payments directly to an office of the insurer in an amount
12 which fairly represents the saving in collection expense.

13 (C) Readjustment of the rate of premium for a group insurance
14 policy based on the loss or expense experience thereunder, at
15 the end of the first year or of any subsequent year of insurance
16 thereunder, which may be made retroactive only for such
17 policy year.

18 (D) Paying by an insurer or agent thereof duly licensed as such
19 under the laws of this state of money, commission, or
20 brokerage, or giving or allowing by an insurer or such licensed
21 agent thereof anything of value, for or on account of the
22 solicitation or negotiation of policies or other contracts of any
23 kind or kinds, to a broker, agent, or solicitor duly licensed
24 under the laws of this state, but such broker, agent, or solicitor
25 receiving such consideration shall not pay, give, or allow
26 credit for such consideration as received in whole or in part,
27 directly or indirectly, to the insured by way of rebate.

28 (9) Requiring, as a condition precedent to loaning money upon the
29 security of a mortgage upon real property, that the owner of the
30 property to whom the money is to be loaned negotiate any policy
31 of insurance covering such real property through a particular
32 insurance agent or broker or brokers. However, this subdivision
33 shall not prevent the exercise by any lender of its or his right to
34 approve or disapprove of the insurance company selected by the
35 borrower to underwrite the insurance.

36 (10) Entering into any contract, combination in the form of a trust
37 or otherwise, or conspiracy in restraint of commerce in the
38 business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of agents or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, agent, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon, of his, her, or its right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and

- 1 intended as a means of repaying such indebtedness in the
2 event of the death or disability of the insured.
- 3 (E) Insurance provided by or through motorists service clubs
4 or associations.
- 5 (F) Insurance that is provided to the purchaser or holder of an
6 air transportation ticket and that:
- 7 (i) insures against death or nonfatal injury that occurs during
8 the flight to which the ticket relates;
- 9 (ii) insures against personal injury or property damage that
10 occurs during travel to or from the airport in a common
11 carrier immediately before or after the flight;
- 12 (iii) insures against baggage loss during the flight to which
13 the ticket relates; or
- 14 (iv) insures against a flight cancellation to which the ticket
15 relates.
- 16 (14) Refusing, because of the for-profit status of a hospital or
17 medical facility, to make payments otherwise required to be made
18 under a contract or policy of insurance for charges incurred by an
19 insured in such a for-profit hospital or other for-profit medical
20 facility licensed by the state department of health.
- 21 (15) Refusing to insure an individual, refusing to continue to issue
22 insurance to an individual, limiting the amount, extent, or kind of
23 coverage available to an individual, or charging an individual a
24 different rate for the same coverage, solely because of that
25 individual's blindness or partial blindness, except where the
26 refusal, limitation, or rate differential is based on sound actuarial
27 principles or is related to actual or reasonably anticipated
28 experience.
- 29 (16) Committing or performing, with such frequency as to
30 indicate a general practice, unfair claim settlement practices (as
31 defined in section 4.5 of this chapter).
- 32 (17) Between policy renewal dates, unilaterally canceling an
33 individual's coverage under an individual or group health
34 insurance policy solely because of the individual's medical or
35 physical condition.
- 36 (18) Using a policy form or rider that would permit a cancellation
37 of coverage as described in subdivision (17).
- 38 (19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor

- 1 vehicle insurance rates.
- 2 (20) Violating IC 27-8-21-2 concerning advertisements referring
- 3 to interest rate guarantees.
- 4 (21) Violating IC 27-8-24.3 concerning insurance and health plan
- 5 coverage for victims of abuse.
- 6 (22) Violating IC 27-8-26 concerning genetic screening or testing.
- 7 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
- 8 insurance producers.
- 9 (24) Violating IC 27-1-38 concerning depository institutions.
- 10 **(25) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or**
- 11 **IC 27-8-5-19.2."**
- 12 Page 2, line 27, after "(e)" insert **"This subsection applies to a**
- 13 **policy that is issued after June 30, 2003, and before July 1, 2005."**
- 14 Page 2, line 29, delete "that arise" and insert **"directly related to"**.
- 15 Page 2, line 30, delete "from".
- 16 Page 2, line 32, delete "five (5)" and insert **"two (2)"**.
- 17 Page 2, line 37, delete "arising from" and insert **"directly related**
- 18 **to"**.
- 19 Page 3, line 34, after "IC 27-8-10-5.1." insert **"This subsection**
- 20 **expires July 1, 2007."**
- 21 Page 3, line 35, after "(f)" insert **"This subsection applies to a**
- 22 **policy that is issued after June 30, 2003, and before July 1, 2005."**
- 23 Page 3, line 35, delete "may" and insert **"shall"**.
- 24 Page 3, between lines 40 and 41, begin a new line blocked left and
- 25 insert:
- 26 **"This subsection expires July 1, 2007."**
- 27 Page 3, line 41, after "(g)" insert **"This subsection applies to a**
- 28 **policy that is issued after June 30, 2003, and before July 1, 2005."**
- 29 Page 4, line 3, after "IC 27-8-28." insert **"This subsection expires**
- 30 **July 1, 2007."**
- 31 Page 4, line 4, after "(h)" insert **"This subsection applies to a**
- 32 **policy that is issued after June 30, 2003, and before July 1, 2005."**
- 33 Page 4, between lines 8 and 9, begin a new line blocked left and
- 34 insert:
- 35 **"This subsection expires July 1, 2007."**
- 36 Page 4, line 9, after "(i)" insert **"This subsection applies to a policy**
- 37 **that is issued after June 30, 2003, and before July 1, 2005."**
- 38 Page 4, line 11, after "issued." insert **"This subsection expires July**

1 **1, 2007.**

2 **(j) This subsection applies to a policy that is issued after June**
 3 **30, 2003, and before July 1, 2005. An insurer or insurance**
 4 **producer shall not use this section to circumvent the guaranteed**
 5 **access and availability provisions of this chapter, IC 27-8-15, or the**
 6 **federal Health Insurance Portability and Accountability Act of**
 7 **1996 (P.L. 104-191). This subsection expires July 1, 2007.**

8 **(k) This subsection applies to a policy that is issued after June**
 9 **30, 2003, and before July 1, 2005. A pattern or practice of**
 10 **violations of subsections (e) through (j) is an unfair method of**
 11 **competition or an unfair and deceptive act and practice in the**
 12 **business of insurance under IC 27-4-1-4. This subsection expires**
 13 **July 1, 2007.**

14 SECTION 3. IC 27-8-5-16.5, AS AMENDED BY P.L.96-2002,
 15 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2003]: Sec. 16.5. (a) As used in this section, "delivery state"
 17 means any state other than Indiana in which a policy is delivered or
 18 issued for delivery.

19 (b) Except as provided in subsection (c), (d), or (e), a certificate may
 20 not be issued to a resident of Indiana pursuant to a group policy that is
 21 delivered or issued for delivery in a state other than Indiana.

22 (c) A certificate may be issued to a resident of Indiana pursuant to
 23 a group policy not described in subsection (d) that is delivered or
 24 issued for delivery in a state other than Indiana if:

25 (1) the delivery state has a law substantially similar to section 16
 26 of this chapter;

27 (2) the delivery state has approved the group policy; and

28 (3) the policy or the certificate contains provisions that are:

29 (A) substantially similar to the provisions required by:

30 (i) section 19 of this chapter;

31 (ii) section 21 of this chapter; and

32 (iii) IC 27-8-5.6; and

33 (B) consistent with the requirements set forth in:

34 (i) section 24 of this chapter;

35 (ii) IC 27-8-6;

36 (iii) IC 27-8-14;

37 (iv) IC 27-8-23;

38 (v) 760 IAC 1-38.1; and

1 (vi) 760 IAC 1-39.

2 (d) A certificate may be issued to a resident of Indiana under an
3 association group policy, a discretionary group policy, or a trust group
4 policy that is delivered or issued for delivery in a state other than
5 Indiana if:

6 (1) the delivery state has a law **that:**

7 **(A) prohibits association policies issued to cover the**
8 **members of an association unless:**

9 **(i) the association was organized and maintained in good**
10 **faith for purposes other than that of obtaining**
11 **insurance;**

12 **(ii) the association has at the outset at least one hundred**
13 **(100) members;**

14 **(iii) the association has been in active existence for at**
15 **least one (1) year;**

16 **(iv) the association has a constitution and bylaws that**
17 **provide that the association holds regular meetings not**
18 **less than annually to further purposes of the members;**

19 **(v) the association, except for credit unions, collects dues**
20 **or solicits contributions from members; and**

21 **(vi) the members have voting privileges and**
22 **representation on the association's governing board and**
23 **committees; and**

24 **(B) is otherwise** substantially similar to section 16 of this
25 chapter;

26 (2) the delivery state has approved the group policy; and

27 (3) the policy or the certificate contains provisions that are:

28 (A) substantially similar to the provisions required by:

29 (i) section 19 of this chapter;

30 (ii) **section 19.2 of this chapter if the policy or certificate**
31 **contains a waiver of coverage;**

32 (iii) section 21 of this chapter; and

33 ~~(iii)~~ (iv) IC 27-8-5.6; and

34 (B) consistent with the requirements set forth in:

35 (i) section 15.6 of this chapter;

36 (ii) section 24 of this chapter;

37 (iii) section 26 of this chapter;

38 (iv) IC 27-8-6;

- 1 (v) IC 27-8-14;
- 2 (vi) IC 27-8-14.1;
- 3 (vii) IC 27-8-14.5;
- 4 (viii) IC 27-8-14.7;
- 5 (ix) IC 27-8-14.8;
- 6 (x) IC 27-8-20;
- 7 (xi) IC 27-8-23;
- 8 (xii) IC 27-8-24.3;
- 9 (xiii) IC 27-8-26;
- 10 (xiv) IC 27-8-28;
- 11 (xv) IC 27-8-29;
- 12 (xvi) 760 IAC 1-38.1; and
- 13 (xvii) 760 IAC 1-39.

14 (e) A certificate may be issued to a resident of Indiana pursuant to
 15 a group policy that is delivered or issued for delivery in a state other
 16 than Indiana if the commissioner determines that the policy pursuant
 17 to which the certificate is issued meets the requirements set forth in
 18 section 17(a) of this chapter.

19 (f) This section does not affect any other provision of Indiana law
 20 governing the terms or benefits of coverage provided to a resident of
 21 Indiana under any certificate or policy of insurance."

22 Page 4, line 16, after "issued" insert **"after June 30, 2003, and**
 23 **before July 1, 2005,"**.

24 Page 4, line 22, delete "that arise from" and insert **"directly related**
 25 **to"**.

26 Page 4, line 25, delete "five (5)" and insert **"two (2)"**.

27 Page 4, line 30, delete "arising from" and insert **"directly related**
 28 **to"**.

29 Page 5, line 26, delete "may" and insert **"shall"**.

30 Page 6, between lines 6 and 7, begin a new paragraph and insert:

31 **"(i) IC 27-8-5-16.5 applies to a policy described in this section.**

32 **(j) An insurer or insurance producer shall not use this section**
 33 **to circumvent the guaranteed access and availability provisions of**
 34 **this chapter, IC 27-8-15, or the federal Health Insurance**
 35 **Portability and Accountability Act of 1996 (P.L. 104-191).**

36 **(k) A pattern or practice of violations of subsections (e) through**
 37 **(j) is an unfair method of competition or an unfair and deceptive**
 38 **act and practice in the business of insurance under IC 27-4-1-4.**

- 1 **(I) This section expires July 1, 2007."**
- 2 Page 10, line 2, strike "may be required to pay not more than".
- 3 Page 10, line 3, strike "twenty-five dollars (\$25)" and insert "**shall**
- 4 **not pay any"**.
- 5 Page 10, line 4, strike "additional".
- 6 Page 10, line 27, delete "showing" and insert "**proving"**.
- 7 Page 10, delete lines 40 through 42.
- 8 Page 11, delete line 1.
- 9 Page 11, between lines 17 and 18, begin a new line block indented
- 10 and insert:
- 11 **"(6) The number of:**
- 12 **(A) complaints; and**
- 13 **(B) requests for external grievance review;**
- 14 **filed in relation to a waiver."**
- 15 Page 11, line 20, delete "September" and insert "**August"**.
- 16 Page 11, line 22, delete "September" and insert "**August"**.
- 17 Page 11, between lines 23 and 24, begin a new line block indented
- 18 and insert:
- 19 **"(3) Not later than August 1, 2006, for the reporting period**
- 20 **July 1, 2005, through June 30, 2006.**
- 21 **(4) Not later than August 1, 2007, for the reporting period**
- 22 **July 1, 2006, through June 30, 2007."**
- 23 Page 11, delete line 27.
- 24 Page 11, between lines 28 and 29, begin a new line block indented
- 25 and insert:
- 26 **"(3) under subsection (b)(3) not later than November 1, 2006;**
- 27 **and**
- 28 **(4) under subsection (b)(4) not later than November 1, 2007;"**.
- 29 Page 11, line 32, delete ", 2005," and insert "**of each year"**.
- 30 Page 11, line 33, after "council" insert "**and each member of the**

- 1 **general assembly".**
- 2 Page 11, line 34, delete "2006." and insert "**2008.**".
- 3 Renumber all SECTIONS consecutively.
(Reference is to SB 341 as reprinted February 14, 2003.)

and when so amended that said bill do pass.

Representative Fry